Pretrial Proceedings in Delinquency Cases

Chapter 9

Summary of Contents

9.1 Pretrial Conferences

MCR 5.922(D) allows the court to direct the parties to appear at a pretrial conference to settle all pretrial matters. Except as otherwise provided in or unless inconsistent with the rules of Subchapter 5.900, the scope and effect of a pretrial conference are governed by MCR 2.401.

A pretrial conference may be held at any time after the commencement of the action. The court must give reasonable notice of the scheduling of the conference. MCR 2.401(A).

9.2 Demand for Jury Trial or Trial Before a Judge*

*See Form JC 20 (summons), which reflects each of these rights.

MCR 5.911(B) provides that a party may demand a jury trial by filing a written demand with the court. The demand must be filed within 14 days after the court gives notice of the right to a jury trial or 14 days after the appearance of counsel, whichever is later. The demand must be filed no later than seven days before trial, but the court may excuse a late filing in the interest of justice.

Similarly, MCR 5.912(B) states that a party may demand that a judge rather than a referee serve as factfinder at a nonjury trial by filing a written demand with the court. The demand must be filed within 14 days after the court has given the parties notice of their right to have a judge preside, or 14 days after

the appearance of counsel, whichever is later. The demand must be made no later than seven days before trial, but the court may excuse a late filing in the interest of justice.

MCR 5.913(B) states that unless a party has demanded a trial by judge or jury, a referee may conduct the trial and further proceedings through the dispositional phase.

MCR 5.913(A)(2) and MCL 712A.10; MSA 27.3178(598.10), specify the requisite qualifications of a referee. If the juvenile is charged with a criminal offense under MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1), only referees who are licensed attorneys may conduct delinquency proceedings other than preliminary inquiries or preliminary hearings. The sole exception is for probation officers or county agents who were designated to act as referees by a probate judge prior to January 1, 1988, and were acting as referees at that time.

9.3 Discovery in Delinquency Cases

A. As of Right

MCR 5.922(A)(1)(a)–(g) lists the following materials as discoverable as of right if they are requested no later than 21 days before trial:

> (a) all written or recorded statements and notes of statements made by the juvenile, in the possession or control of petitioner or a law enforcement agency, including oral statements if they have been reduced to writing;
>
> (b) all written or recorded non-confidential statements made by any person with knowledge of the events, in possession or control of petitioner or a law enforcement agency, including police reports;
>
> (c) the names of prospective witnesses;
>
> (d) a list of all physical or tangible objects which are prospective evidence;
>
> (e) the results of all scientific, medical, or other expert tests or experiments, including the reports or findings of all experts that are prospective evidence in the matter;
>
> (f) the results of any lineups or showups, including written reports or lineup sheets; and
>
> (g) all search warrants issued in connection with the matter, including applications for such warrants, affidavits, and returns or inventories.

B. By Motion

MCR 5.922(A)(2) states that on motion* of a party, the court may permit discovery of any other materials and evidence, including untimely requested materials and evidence that would have been discoverable of right under MCR 5.922(A)(1) if timely requested. Absent manifest injustice, no motion for discovery will be granted unless the moving party has requested and has not been provided the materials or evidence sought through an order of discovery.

*See Section 9.7, below (motion practice).

9.4 Notice of Alibi, Insanity, or Diminished Capacity Defense and Rebuttal in Delinquency Cases

MCR 5.922(B)(1)–(3) provide that:

> (1) Within 21 days after the juvenile has been given notice of the date of trial, but no later than seven days before the trial date, the juvenile or the juvenile's attorney must file a written notice with the court and prosecuting attorney of the intent to rely on a defense of alibi, insanity, or diminished capacity, or a defense of mental illness negating an element of the alleged offense. This notice must include a list of the names and addresses of the defense witnesses.
>
> (2) Within seven days after receipt of notice, but no later than two days before the date of trial, the prosecuting attorney must provide written notice to the court and defense of an intent to offer rebuttal to the above-listed defenses. The notice must include names and addresses of rebuttal witnesses.
>
> (3) Failure to comply with subrules (1) and (2) may result in the exclusion of evidence, as set forth in MCL 768.21; MSA 28.1044.

9.5 Exclusion of Evidence for Failure to Provide Adequate Notice of Defense or Rebuttal

MCL 768.21(1)–(2); MSA 28.1044(1)–(2), which apply to both delinquency cases and criminal cases, allow the court to exclude evidence offered by the defendant or prosecuting attorney for the purpose of establishing or rebutting the defenses of alibi or insanity. If the required notice is not filed and served at all, the court must exclude the proffered evidence. In addition, if the notice given by the defendant or the prosecuting attorney does not state, as particularly as is known to the party, the name of a witness to be called to establish or rebut a defense of alibi or insanity, the court must exclude the testimony of the witness offered for the purpose of establishing or rebutting either defense.

Despite the language in MCL 768.21(1)–(2); MSA 28.1044(1)–(2), that suggests that exclusion is mandatory if a notice is not filed, the trial court retains discretion to fix the timeliness of a notice. *People v Travis*, 443 Mich

668, 679 (1993). In exercising its discretion in cases involving alibi, a court should consider:

- the amount of prejudice resulting from the failure to disclose;
- the reason for nondisclosure;
- the extent to which the harm caused by nondisclosure was mitigated by subsequent events;
- the weight of the properly admitted evidence supporting defendant's guilt; and
- other relevant factors arising out of the circumstances of the case.

*See Section 11.21.

Id., at 681–83, citing *United States v Myers,* 550 F2d 1036, 1043 (CA 5, 1977). See also MCR 5.923(A)(3) (court has authority to call additional witnesses or order production of other evidence).*

Strict compliance with the statutory notice requirement for assertion of an insanity defense may not be necessary, where the court and parties have actual notice that the defense will be relied upon, and where the purposes of the statute are fulfilled. *People v Blue,* 428 Mich 684, 690 (1987), and *In re Ricks,* 167 Mich App 285, 292–93 (1988).

9.6 Order by Family Division for Examination of Juvenile

MCR 5.923(B) states that the court may order that a minor or a parent be examined or evaluated by a physician, dentist, psychologist, or psychiatrist.

9.7 Motion Practice*

*See also Monograph 6, *Pretrial Motions* (MJI, 1992).

Motion practice in delinquency cases is governed by MCR 2.119, except that a motion to suppress evidence must be filed at least seven days before trial or, in the court's discretion, at trial. MCR 5.922(C). See, generally, *People v Walker (On Rehearing),* 374 Mich 331 (1965).

A motion to suppress evidence in a criminal case must be made in advance of trial. *People v Gray,* 45 Mich App 643, 644 (1973). However, the trial court has discretion to conduct an evidentiary hearing during trial although no pretrial motion was made. *People v Soltis,* 104 Mich App 53, 55 (1981), *People v Leonard,* 81 Mich App 86, 89 (1978) (involuntary confession), and *People v Childers,* 20 Mich App 639, 645–46 (1969) (pretrial identification).

A. Notice and Service Requirements

Personal service of the motion, notice of the hearing on the motion, and any supporting briefs or affidavits must be made at least 7 days before the hearing, 9 days if served by mail. Personal service of the response must be made at least 3 days before the hearing. If service is by mail, add 2 days. For good cause, the court may set different periods for filing and serving motions. MCR 2.119(C).

B. Form of Motions

Unless made during trial, a motion must be in writing, must state with particularity the grounds and authority on which it is based, must state the relief or order sought, and must be signed by the party or attorney filing the motion. MCR 2.119(A). A court may, in its discretion, dispense with or limit oral argument and may require the parties to file briefs in support of and in opposition to a motion. MCR 2.119(E)(3).

Affidavits may be required when a motion is based on facts not appearing in the record. MCR 2.119(E)(2). If an affidavit is filed, it must be based on personal knowledge, state with particularity facts admissible as evidence, and demonstrate that the affiant is competent to testify as a witness. MCR 2.119(B)(1).

C. Motions for Rehearing and Reconsideration*

*See also Section 11.27 for a discussion of motions for rehearing pursuant to MCR 5.992.

A motion for rehearing or reconsideration must be filed and served within 14 days of the entry of the order disposing of the motion. MCR 2.119(F)(1). No response to the motion may be filed, and no oral argument is allowed unless the court directs otherwise. MCR 2.119(F)(2). The moving party must demonstrate palpable error and show that a different disposition must result from correction of the error. MCR 2.119(F)(3).

9.8 Speedy Trial Requirements in Delinquency Cases

MCR 5.942(A) states that in all cases the trial must be held within six months after the filing of the petition, unless adjourned for good cause. If the juvenile is detained, the trial has not started within 63 days after the juvenile is taken into custody, and the delay in starting the trial is not attributable to the defense, the court shall order forthwith that the juvenile be released pending trial without requiring that bail be posted unless the juvenile is being detained on another matter.

NOTE: There is no sanction stated in MCR 5.942(A) for violation of the 6-month rule.

9.9 Speedy Trial Requirements When a Motion for "Traditional" Waiver Has Been Denied*

*See also Section 24.21 for discussion of additional required procedures.

In cases where the prosecutor has sought waiver of the court's jurisdiction and the motion has been denied, MCR 5.950(D) states that if the juvenile is detained and the trial of the matter in juvenile court has not started within 28 days after entry of the order denying the waiver motion and the delay is not attributable to the defense, the court shall forthwith order the juvenile released pending trial without requiring that bail be posted unless the juvenile is being detained on another matter.

9.10 Motion to Close Delinquency Proceedings to the Public

*See Form JC 41.

MCR 5.925(A)(1) provides that, as a general rule, all juvenile court proceedings on the formal calendar and all preliminary hearings shall be open to the public. However, MCL 712A.17(7); MSA 27.3178(598.17)(7), and MCR 5.925(A)(2) allow the court to close proceedings to the general public under limited circumstances.* The court, on motion of a party or a victim, may close proceedings to the general public during the testimony of a child or a victim to protect the welfare of the child or victim. In making such a decision, the court must consider:

- the age of the juvenile witness or the victim;
- the psychological maturity of the juvenile witness or the victim;
- the nature of the proceedings; and
- the desire of the juvenile witness or his or her family or guardian or the desire of the victim to have the testimony taken in a room closed to the public.

The court may not close proceedings during the testimony of a juvenile if the juvenile is charged with a violation of law under MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1). MCL 712A.17(8); MSA 27.3178(598.17)(8), and MCR 5.925(A)(2).

9.11 Motion for Change of Venue in Delinquency Cases

In delinquency cases not involving a waiver of jurisdiction, venue is proper where the offense occurred or where the juvenile is physically present. MCL 712A.2(a) and (d); MSA 27.3178(598.2)(a) and (d), and MCR 5.926(A). The case may also be transferred to the juvenile's county of residence. MCR 5.926(B).

*See Form PC 61.

MCR 5.926(D)(1)–(2) allow for change of venue in juvenile delinquency proceedings* in two circumstances:

(1) for the convenience of the parties and witnesses if the judge of the other court agrees to hear the case, and

(2) when an impartial trial cannot be had where the case is pending.

*See Chapter 24.

Motions for "traditional" waiver must be heard in the county where the offense occurred. MCL 712A.4(1); MSA 27.3178(598.4)(1).*

9.12 Alternative Procedures to Obtain Testimony of Alleged Victim During Delinquency Adjudication

MCR 5.923(E) states that the court may allow the use of closed-circuit television, speaker telephone, or other similar electronic equipment to facilitate hearings or to protect the parties. The court may allow the use of

videotaped statements and depositions, anatomical dolls, support persons, and take other measures to protect the child witness as authorized by, and enumerated in, MCL 712A.17b; MSA 27.3178(598.17b). A motion must be filed by a party before the adjudication stage, and the court must find on the record that special arrangements are necessary to protect the witness. MCL 712A.17b(10); MSA 27.3178(598.17b)(10).

MCL 712A.17b(14); MSA 27.3178(598.17b)(14), states that the procedures are in addition to other protections or procedures afforded to a witness by law or court rule. MRE 611(a) allows the court to exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment. See, generally, *In re Hensley*, 220 Mich App 331, 332–35 (1996).

A. Offenses Covered by the Statute

MCL 712A.17b(2)(a); MSA 27.3178(598.17b)(2)(a), permits these alternative procedures to be used only in the following types of cases:

- child abuse, MCL 750.136b; MSA 28.331(2);
- sexually abusive commercial activity involving children, MCL 750.145c; MSA 28.342a;
- first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2);
- second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3);
- third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4);
- fourth-degree criminal sexual conduct, MCL 750.520e; MSA 28.788(5); and
- assault with intent to commit criminal sexual conduct, MCL 750.520g; MSA 28.788(7).

B. Witnesses Covered by the Statute

MCL 712A.17b(1)(b); MSA 27.3178(598.17b)(1)(b), states that witness means an alleged victim of any of the above listed offenses who is either under 15 years of age, or older than 15 years of age and developmentally disabled. MCL 712A.17b(1)(a); MSA 27.3178(598.17b)(1)(a), in turn, defines developmental disability as an impairment of general intellectual functioning or adaptive behavior which meets the following criteria:

- it originated before the person became 18 years of age;
- it has continued since its origination or can be expected to continue indefinitely;

- it constitutes a substantial burden to the impaired person's ability to perform normally in society; and
- it is attributable to mental retardation, autism, or any other condition of a person related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.

C. Methods That May Be Used

Dolls or Mannequins

If pertinent, the witness must be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination. MCL 712A.17b(3); MSA 27.3178(598.17b)(3).

Support Person

MCL 712A.17b(4); MSA 27.3178(598.17b)(4), provides that a witness who is called upon to testify must be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person must name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person must be filed with the court and served upon all parties to the proceeding. The court shall rule on any motion objecting to the use of a named support person prior to the date at which the witness desires to use the support person.

Rearranging of Courtroom

MCL 712A.17b(11)(a)–(b); MSA 27.3178(598.17b)(11)(a)–(b), state that if the court determines on the record that it is necessary to protect the welfare of the witness, the court shall order one or both of the following:

> (a) In order to protect the witness from directly viewing the respondent, the courtroom must be arranged so that the respondent is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The respondent's position must be located so as to allow the respondent to hear and see all witnesses and be able to communicate with his or her attorney.
>
> (b) A questioner's stand or podium must be used for all questioning of all witnesses by all parties, and must be located in front of the witness stand.

In determining whether it is necessary to rearrange the courtroom to protect the witness, the court shall consider the following:

(a) the age of the witness;

(b) the psychological maturity of the witness; and

(c) the nature of the offense or offenses.

MCL 712A.17b(10)(a)–(c); MSA 27.3178(598.17b)(10)(a)–(c).

F Use of Videotape Depositions When Other Protections Are Inadequate

MCL 712A.17b(12); MSA 27.3178(598.17b)(12), states that if the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections outlined above, the court must order that a videotape deposition of a witness be taken to be admitted at the adjudication stage instead of the live testimony of the witness.

If the court grants the party's motion to use a videotape deposition, the deposition must comply with the requirements of MCL 712A.17b(13); MSA 27.3178(598.17b)(13), which provides that:

— The examination and cross-examination of the witness must proceed in the same manner as if the witness testified at the adjudication stage; and

— The court must order that the witness, during his or her testimony, not be confronted by the respondent, but the respondent must be permitted to hear the testimony of the witness and to consult with his or her attorney.

In order to preserve a criminal defendant's Sixth Amendment right of confrontation, the court must hear evidence and make particularized, case-specific findings that the procedure is necessary to protect the welfare of the child witness who seeks to testify. In *Maryland v Craig*, 497 US 836; 110 S Ct 3157; 111 L Ed 2d 666 (1990), the United States Supreme Court described the necessary findings:

> "The requisite finding of necessity must of course be a case specific one: the trial court must hear evidence and determine whether use of the one-way closed circuit television procedure is necessary to protect the welfare of the particular child witness who seeks to testify. . . . The trial court must also find that the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant. . . . Denial of face-to-face confrontation is not needed to further the state interest in protecting the child witness from trauma unless it is the presence of the defendant that causes

> the trauma. In other words, if the state interest were merely the interest in protecting child witnesses from courtroom trauma generally, denial of face-to-face confrontation would be unnecessary because the child could be permitted to testify in less intimidating surroundings, albeit with the defendant present. Finally, the trial court must find that the emotional distress suffered by the child witness in the presence of the defendant is more than de minimis, i.e., more than 'mere nervousness or excitement or some reluctance to testify'. . . ." *Id.*, 497 US at 855–56.

See also *In re Vanidestine*, 186 Mich App 205, 209–11 (1990), *In re Brock*, 442 Mich 101, 105–15 (1993) (videotape deposition and impartial questioner used), and *Coy v Iowa*, 487 US 1012, 1020; 108 S Ct 2798; 101 L Ed 2d 857 (1988).

9.13 Appointment of Impartial Questioner

The court may appoint an impartial psychologist or psychiatrist to ask questions of a child witness at a hearing. MCR 5.923(F).

9.14 Fingerprinting and Photographing of Juveniles

*See Form JC 16.

MCR 5.923(C) states that the court may permit fingerprinting or photographing or both* of a juvenile when he or she is in court custody. The fingerprints and photographs must be placed in the social file, capable of being located and destroyed on court order.

NOTE: A request for fingerprinting or photographing of a juvenile may be made when police are conducting investigations of other matters and are seeking to link the juvenile, who is in court custody, to or exclude the juvenile from commission of other offenses.

*See Section 4.10(A).

MCR 5.923(C) applies to all delinquency cases and is discretionary with the court. It should not be confused with the fingerprinting requirements contained in MCL 28.243(1); MSA 4.463(1), and MCR 5.936(B), which make it mandatory for the police to take fingerprints of all juveniles who are arrested for "reportable juvenile offenses."*

9.15 Pretrial Identification Procedures

NOTE: For a discussion of motions to suppress evidence, see Monograph 6, *Pretrial Motions* (MJI, 1992).

A. Right to Counsel in Delinquency Proceedings*

*See also Section 16.41(A) (right to counsel in criminal proceedings).

*See Form JC 16.

If a complaint or petition is filed with the Family Division against a juvenile alleging violation of a criminal law or ordinance, the court may, at the request of the person submitting the petition or complaint, order the juvenile to appear at a place and time designated by the court for identification by another person, including a corporeal lineup. MCL 712A.32(1); MSA 27.3178(598.30b)(1), and MCR 5.923(D).*

If the court orders the juvenile to appear for such an identification proceeding, the court must notify the juvenile and the juvenile's parent, guardian, or legal custodian:

- that the juvenile has the right to consult with an attorney and have an attorney present during the identification proceeding, and
- that if the juvenile and the juvenile's parent, guardian, or legal custodian cannot afford an attorney, the court will appoint an attorney for the juvenile if requested on the record or in writing by the juvenile or the juvenile's parent, guardian, or legal custodian.

MCL 712A.32(2); MSA 27.3178(598.30b)(2), and MCR 5.923(D).

Counsel is required at a photographic showup when the accused is in custody, but not when police have not yet arrested the accused or focused their investigation on the accused alone. *People v Kurylczyk*, 443 Mich 289, 301–02 (1993).

B. Impermissible Suggestiveness and Due Process Limitations

Substantive evidence concerning any "pre-indictment" identification procedure is inadmissible if the procedure is so unnecessarily suggestive and conducive to irreparable misidentification that it amounts to a denial of due process. *Stovall v Denno*, 388 US 293, 302; 87 S Ct 1967; 18 L Ed 2d 1199 (1967), *People v Anderson*, 389 Mich 155, 168–69 (1973), *People v Kurylczyk*, 443 Mich 289, 302–11 (1993) (photographic identifications).

Physical differences among a suspect and other lineup participants do not alone establish impermissible suggestiveness. *People v Benson*, 180 Mich App 433, 438 (1989). Such differences are significant only when apparent to the witness and when they serve to substantially distinguish

the defendant from the other participants. *People v James*, 184 Mich App 457, 466 (1990), vacated on other grounds 437 Mich 988 (1991). See also *People v Kurylczyk*, 443 Mich 289, 304–05, 311–14 (1993) (appearance of the accused in lineup wearing same clothes as during the commission of offense does not automatically render procedure impermissibly suggestive).

NOTE: There may be a practical problem of finding other persons of a similar age and appearance to stand in corporeal lineups with the juvenile.

Where the witness has failed to identify the accused in a pretrial identification procedure, a later confrontation during a preliminary examination will not be held to be impermissibly suggestive per se. *People v Barclay*, 208 Mich App 670, 675–76 (1995), *People v Solomon*, 47 Mich App 208, 216–21 (1973), and *People v Whitfield*, 214 Mich App 348, 351 (1995) (confrontation during waiver hearing).

The suggestiveness of a confrontation is determined by considering the totality of the circumstances surrounding the procedure. *Stovall v Denno*, 388 US 293, 301–02; 87 S Ct 1967; 18 L Ed 2d 1199 (1967), and *People v Lee*, 391 Mich 618, 626 (1974). In ascertaining whether a pretrial confrontation is impermissibly suggestive, a court must look to the totality of the circumstances in the case, especially the time between the criminal act and the confrontation, and the duration of the witness's contact with the perpetrator during commission of the offense. *People v Johnson*, 58 Mich App 347, 352–55 (1975), and *Neil v Biggers*, 409 US 188; 93 SCt 375; 34 L Ed 2d 401 (1972).

C. Consequences of Violation

If the pretrial identification procedures are unnecessarily suggestive or conducive to irreparable misidentification, testimony as to the out-of-court identification is excluded per se. *Gilbert v California*, 388 US 263, 273; 87 S Ct 1951; 18 L Ed 2d 1178 (1967). In-court identification is permissible if the prosecuting attorney shows by clear and convincing evidence that the in-court identification has a basis independent of the illegal lineup. *United States v Wade*, 388 US 218, 240; 87 S Ct 1926; 18 L Ed 2d 1149 (1967), *Manson v Braithwaite*, 432 US 98; 87 S Ct 1926; 18 L Ed 2d 1149 (1977), and *People v Anderson*, 389 Mich 155, 167 (1973).

These factors must be considered when determining whether an in-court identification has an independent basis:

- prior relationship with or knowledge of the defendant;
- the opportunity to observe the offense, including such factors as the length of time of the observation, lighting, noise, or other factor affecting sensory perception and proximity to the alleged criminal act;

- **F** length of time between the offense and the disputed identification;
- **F** accuracy or discrepancies in the pre-lineup or showup description and defendant's actual description;
- **F** any previous proper identification or failure to identify the defendant;
- **F** any identification prior to the lineup or showup of another person as defendant;
- **F** the nature of the alleged offense and the physical and psychological state of the witness, including such factors as fatigue, nervous exhaustion, intoxication, age, and intelligence of the witness; and
- **F** any idiosyncratic or special features of the defendant.

People v Kachar, 400 Mich 78, 91–97 (1977).

9.16 Violation of the "Immediacy Rule" and the Voluntariness of Confessions

NOTE: For a discussion of motions to suppress evidence, see Monograph 6, *Pretrial Motions* (MJI, 1992).

A conflict existed among Michigan courts for several years as to whether violation of the "immediacy rule,"* MCL 764.27; MSA 28.886, dictated exclusion of a confession obtained following a violation of the rule, or whether the violation was merely one factor to consider in determining the voluntariness of the confession. In *People v Good*, 186 Mich App 180, 186–90 (1990), the Court of Appeals resolved the conflict in favor of a "totality of the circumstances" analysis, under which violation of the "immediacy rule" is one factor to consider in determining the voluntariness of a juvenile's confession. See also *People v Milton*, 191 Mich App 666 (1991) (following the approach adopted in *Good*).

*See Section 3.2 for a discussion of the "immediacy rule."

- **F** Cases following the per-se exclusion rule: *People v Wolff*, 23 Mich App 550 (1970), and *People v Allen*, 109 Mich App 147, 155–58 (1982).
- **F** Cases following a totality-of-the-circumstances approach: *People v Roberts*, 3 Mich App 605, 612 (1966), *People v King*, 27 Mich App 619, 622–23 (1970), *People v Jordan*, 149 Mich App 568, 572 (1986), *People v Jackson*, 171 Mich App 191, 198 (1988), *People v Morris*, 57 Mich App 573, 575–76 (1975), and *People v Irby*, 129 Mich App 306, 315–21 (1983).

A. Factors to Determine Voluntariness

A "non-exhaustive" list of factors to be used to determine whether a statement was voluntarily made are:

- whether *Miranda* rules were complied with, and whether the juvenile clearly understood and waived his or her *Miranda* rights;
- the degree of police compliance with statutory and other requirements;
- the presence of an adult parent, custodian, or guardian;
- the juvenile defendant's personal background;
- the juvenile's age, education, and intelligence level;
- the extent of the juvenile's prior experience with police;
- the length of the detention prior to the statement;
- the repeated or prolonged nature of the questioning; and
- whether the juvenile was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep, or medical attention.

People v Good, 186 Mich App 180, 186–90 (1990). See also *People v Rode,* 196 Mich App 58, 69–70 (1992) (presence of parent).

Under Const 1963, art 1, §17, if a criminal defendant's confession is induced by a law enforcement official's promise of leniency, that is one factor in determining whether the confession is involuntary and inadmissible. If the defendant reasonably understood the official's statements to be a promise of leniency, and if the defendant relied on that promise in deciding to inculpate himself and in making the specific statement in question, the statement is involuntary and inadmissible. *People v Conte,* 421 Mich 704, 739–43 (1984), and *People v Givans,* 227 Mich App 113, 119–20 (1997) (case involving 16-year-old defendant).

A confession is inadmissible under either a per-se approach or a totality-of-the-circumstances approach if the delay in bringing the juvenile before the juvenile court is used as a tool to extract a confession. *People v Strunk,* 184 Mich App 310, 314–22 (1990). However, if other evidence of guilt is overwhelming, admission of an involuntary confession may be harmless error. See MCR 5.902, 2.613(A), *People v Williams,* 163 Mich App 744, 749–54 (1987), and *People v McCray,* 210 Mich App 9, 11–12 (1995).

NOTE: To determine the voluntariness of an adult criminal defendant's confession, the court must examine the duration and conditions of detention, the attitude of the police toward the accused, the physical and mental state of the accused, and the diverse pressures which sap or sustain the power of resistance or self-control. *People v Price,* 112 Mich App 791, 797 (1982).

B. "Immediacy Rule" Inapplicable in "Automatic" Waiver Cases

Because the "automatic" waiver rule, MCL 600.606; MSA 27A.606, divests the Family Division of jurisdiction and gives the Criminal Division original jurisdiction over specified juvenile violations if the prosecutor files a complaint and warrant instead of a petition, juveniles need not be taken before the juvenile court. MCR 6.907(A), 6.909(A), *People v Spearman*, 195 Mich App 434, 443–45 (1992), overruled on other grounds 443 Mich 23, 43 (1993), and *People v Brooks*, 184 Mich App 793, 797–98 (1990).*

*See Section 3.1, Note (detention of juvenile by designated court official pending authorization of complaint and warrant by prosecutor).

C. *Miranda* Applies to Cases Involving Juveniles

Before subjecting the accused to custodial interrogation, police officers must advise the accused of the right to remain silent, that any statement he makes may be used as evidence against him, that he may have retained or appointed counsel present during questioning, and that he may stop answering questions at any time. *Miranda v Arizona*, 384 US 436, 478–79; 86 S Ct 1602; 16 L Ed 2d 694 (1966). *Miranda* applies to juveniles. *Fare v Michael C*, 442 US 707; 99 S Ct 2560; 61 L Ed 2d 197 (1979). See also *People v Black*, 203 Mich App 428, 430 (1994) (in "automatic" waiver case, juvenile's confession admissible, where juvenile initiated interview with police after invoking rights to attorney and to remain silent), and *People v Anderson*, 209 Mich App 527, 530–35 (1995) (juvenile corrections officer not law enforcement officer for *Miranda* purposes).